

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.24 of 2022

Shri Siddhartha Bhattacharjee

....Petitioner(s)

Versus

The State of Tripura and 4 Ors.

....Respondent(s)

For the Petitioner(s)	:	Mr. C.S. Sinha, Advocate
For the Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, GA Mr. Raju Datta, Advocate

HON'BLE MR. JUSTICE ARINDAM LODH

Order

04/04/2024

Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the respondents-State and Mr. Raju Datta, learned counsel appearing for the respondents-TPSC.

By means of filing the instant writ petition, the petitioner has prayed for following reliefs:

“In such circumstances, it is humbly prayed that Your Lordship would be graciously pleased to:

- a. admit this petition;*
- b. call for the records;*
- c. issue writ in the nature of mandamus calling upon the respondents to show cause as to why the petitioners should not be considered for appointment on promotion to the post of TCS Grade-II on ad-hoc basis under the Notification No.F.2(24)GA(P&T)/2021 dated 22-06-2021.*
- d. issue writ in the nature of mandamus calling upon the respondents to show cause as to why the post of Assistant Commissioner (Excise) should not be taken as feeder post of TCS Gr II and included in list of feeder posts of TCS Gr II published vide Notification dated 19.12.2011.*

e. issue writ in the nature of certiorari calling upon the respondents to show cause as to why the Notification dated 19.12.2011 should not be declared unjustified and illegal to the extent that the respondent authority have acted unreasonably and without application of mind by leaving out the post of Assistant Commissioners in the Finance Department (Excise) from the feeder posts of TCS Gr II and making its feeder post as feeder post of TCS Gr II.

f. pass any other order/orders which this Hon'ble Court may deem fit and proper;"

Mr. Sinha, learned counsel for the petitioner during his submission on merits of the writ petition has urged this Court to treat the post of Assistant Commissioner(Excise) as a feeder post of TCS Grade-II and to include the same in list of feeder post of TCS Grade-II published vide notification dated 19.12.2011. It is also submitted that if the said post of Assistant Commissioner(Excise) is treated as feeder post then the petitioner would be entitled to be considered for promotion to the post of TCS Grade-II.

It is also submitted that the feeder post of Assistant Commissioner(Excise) is Inspector(Excise) and the post of Inspector(Excise) is the feeder post of TCS Grade-II. Similarly, feeder post of Chief Inspector(Food) is post of Inspector(Food) and the post of Inspector(Excise) is the feeder post of TCS Grade-II.

I have considered the submissions advanced by learned counsel for the petitioner.

In response to the above submissions of Mr. Sinha, learned counsel for the petitioner, learned GA has submitted that the identification of posts is within the domain of the Government and there may not be any interference by the Court. It is a policy matter of the Government and governed by the relevant recruitment rule applicable for a particular post.

Mr. Bhattacharyya, learned GA has given much emphasis on the statements made in paras 7, 8 and 9 of the counter affidavit where it is stated that:

"7.That, with respect to paragraph-3, I say that GA (P&T) Deptt has allowed promotion after exercising eligibility in all respect of the incumbents sponsored by the Departments holding feeder posts on

the basis of the recommendation of the DPC following the TCS Rules, 1967 Accordingly, the incumbents from the post of Sr. Inspector and Sub-Inspector of Excise sponsored by the office of the Commissioner of Excise, Govt of Tripura was considered as these posts are categorized under Schedule-IV of the TCS Rules, 1967. The posts of Asstt Commissioner of Excise under Excise Organization are not categorized under Schedule-IV. Hence, the promotion of the petitioners were not considered by the DPC as per rules. Thus, the contention of inaction is strongly denied.

8. That, with respect to paragraphs 4, I say that, it is fact that the names of Chief Inspectors of Food were considered for promotion as per verdict dated 18-10-2021 of the Hon'ble High Court passed in WP(C) No.751 of 2021. It is to mention that the post of Chief Inspector (Food) though not categorized in Schedule-IV of TCS Rules, 1967, but the post is uniquely placed in between two posts namely, Inspector of Food and SDC(Food) wherein both the posts are feeder post to TCS Gr-II. The Chief Inspector of Food is the promotional post of Inspector of Food, but Chief Inspector of Food is not included in the feeder post of TCS Gr-II. On the other hand, the post of SDC(Food) which is the promotional post of Chief Inspector of Food has been included as feeder post of TCS Gr II. Thus, Chief Inspector of Food which is not placed in cadre schedule is in a sandwiched position between two feeder post viz, Inspector of Food and SDC(Food). On the other hand, the matter of Asstt. Commissioner of Excise is not a similarly situated case. The immediate lower post of Asstt. Commissioner of Excise, i.e. Sub-Inspector of Excise and Sr. Inspector of Excise are the feeder post of TCS Gr-II. Moreover, it is to mention that no posts higher than that of Asstt Commissioner of Excise has been included in the feeder post Therefore, the Asstt Commissioner of Excise has not been considered for promotion.

(A Copy of the Schedule IV of TCS Rules, 1967 is annexed herewith and marked as Annexure-R/1)

9. That, with respect to paragraphs 5, I say that. The contention of the petitioners are strongly denied The cases of Asstt. Commissioner

of Excise and Chief Inspector of Food are not similarly placed as per narration at para-4 above.

Since inception of TCS Rules, 1967, the posts viz Asstt. Commissioner of Excise and Chief Inspector of Food are not categorized as feeder posts of TCS. Now, it is completely an administrative matter to categorize a post as feeder post to TCS considering several parameters. Further, the order dated 19.08.2015 passed in WP(C) No. 262 of 2012 has also confirmed about jurisdiction of the Department in categorization of feeder post to TCS Gr-II as under:

"this Court is not sitting as an Appellate Authority in such matter. Judicial review of administrative action is limited to see whether the action has been taken in accordance with well settled principles. It is for the State to decide what are the eligibility criteria for filling up the post. In cases of promotions, it is for the State to decide who shall be the feeder category. The Courts normally do not interfere in these matters unless the decision of the State is perverse."

Having said so, the question raised and the prayers made by the petitioner in this writ petition is remitted to the respondents for consideration of the same in accordance with law.

With the aforesaid direction, the instant writ petition stands disposed.

JUDGE

Snigdha

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KAR

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by SAIKAT KAR
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